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January 19, 2021

BY EMAIL/ECF

The Honorable Katherine Polk Failla
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007

*United States v. Anilesh Ahuja,
18 Cr. 328 (KPF)*

Dear Judge Failla:

We write to respectfully request that the Court amend its January 13, 2021 Order to (a) request declarations from other persons with firsthand knowledge of the events in question; and (b) include two additional questions suggested below. We believe that these additional declarations and questions will further assist the Court in its efforts to understand the relevant facts.

In terms of declarants, we respectfully request that Your Honor direct that other persons who participated in the events in question be asked to submit declarations as to their recollections of those events. So, for example, to the extent Your Honor has asked questions about communications between the prosecution and Mr. Majidi and his counsel surrounding his plea, we believe that Mr. Majidi's counsel (and Mr. Majidi himself) may have recollections that are useful in reconstructing what happened. While not all of the Court's questions are applicable to people outside the prosecution team, some of them

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clearly are. Particularly to the extent the prosecution team cannot recall the conversations in question, we believe it makes sense to inquire of others who may remember them.

With respect to the questions themselves, we respectfully request the following:

First, we request that each of the prosecutor-declarants (and, as suggested above, Mr. Majidi, his attorneys Brian Linder and Seth Rosenberg, and any non-prosecutor members of the government team present at the plea, such as FBI Agent Matthew Mahaffey) describe any knowledge he or she has of how and when the government's revision of Mr. Majidi's allocution was communicated to Mr. Majidi and/or his counsel, including how and when Mr. Majidi came into possession of a written version of the revised allocution.

The transcript from Mr. Majidi's plea demonstrates that he read from a written document that reflected the government's re-write of his proposed allocution. It is not known, however, how the government's edited text was communicated to Mr. Majidi or his lawyers; who created the document from which Mr. Majidi read at his plea; or how that document came to be in Mr. Majidi's possession in Court on the day of the plea. There is no record of any email from the government to Mr. Majidi's lawyers transmitting the revised allocution, and Mr. Majidi's lawyer has stated that there is no record on his law firm's network of the final allocution. (Trial Tr. 2059:21-24.) It also appears that at the government's request, one of the prosecutors met with at least one of Mr. Majidi's attorneys in person approximately ten minutes before the plea, but the government has not identified the reason for making the request or the substance of what was discussed.

Second, we request that each of the prosecutor-declarants describe the bases for the government's representation in its June 8, 2019 letter to the Court—responding to a Court Order—that the government had reviewed its file, including archived emails, for “all communications with attorneys for witnesses in this case,” and that there were no additional responsive communications that should be disclosed. (Dkt. No. 209 at 1–2.)

As Your Honor is aware, a number of relevant communications with cooperating witnesses' attorneys were produced for the first time more than a year after the government made that representation. Those communications include, among others: (i) an email to Mr. Majidi's attorney proposing a meeting before Mr. Majidi's plea (Dkt. No. 385 at 5–6, Ex. 10); (ii) an email from counsel for Frank Dinucci sending the government a second, previously unproduced proposed allocution (Dkt. No. 389 at 1–2, Ex. B); and (iii) an email exchange with counsel for Mr. Dinucci in which the government stated it would like a hard copy of Mr. Dinucci's proposed allocution to review (Dkt. No. 392 at 1–2, Ex. A). Additional communications that the government produced for the first time in recent months reflect that prosecutors had oral discussions (by telephone or in-person) with counsel for cooperating witnesses on the date of their pleas or in connection with plea allocutions. (Dkt. No. 385 at 13–14, Exs. 15–16; Dkt. No. 392 at 1–2, Ex. A.)

In light of these disclosures, we believe that the prosecutors should be asked to explain the steps they took before representing that they had reviewed all

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communications with witnesses' attorneys in June 2019, including steps taken to locate evidence of oral communications; whether they identified any of the undisclosed communications at the time; and, if so, why those communications were not disclosed.

Respectfully submitted,



Roberto Finzi
Richard C. Tarlowe

cc: Counsel of Record